



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90810; File No. SR-NYSE-2020-109]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add Commentary .07 to Rule 7.35A to Provide that, for a Temporary Period, the Exchange Will Permit DMMs Limited-Entry to the Trading Floor or Remote Access to Floor-Based System for Certain Auctions

December 29, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on December 28, 2020, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .07 to Rule 7.35A to provide that, for a temporary period that begins December 28, 2020, and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on April 30, 2021, the Exchange would (1) permit a DMM limited entry to the Trading Floor or (2) provide a DMM remote access to Floor-based systems, for the purpose of effecting a manual Core Open Auction in connection with a corporate action that may result in a significant price discovery event or a manual Direct Listing Auction. The proposed rule change is available on the Exchange’s

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add Commentary .07 to Rule 7.35A to provide that, for a temporary period that begins December 28, 2020, and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on April 30, 2021, the Exchange would (1) permit a DMM limited entry to the Trading Floor or (2) provide a DMM remote access to Floor-based systems, for the purpose of effecting a manual Core Open Auction in connection with a corporate action that may result in a significant price discovery event or a manual Direct Listing Auction.

Background

On December 23, 2020, in response to changes in the New York City-area public health conditions, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that DMMs would temporarily return to remote operations beginning on Monday, December 28, 2020.⁴ The Exchange previously moved to fully electronic trading on a temporary basis⁵ and then partially

⁴ See Trader Update, dated December 23, 2020, available here: https://www.nyse.com/publicdocs/nyse/notifications/trader-update/DMMs_moving_remote_December_2020.pdf.

⁵ Beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New

reopened in two phases,⁶ subject to safety measures designed to prevent the spread of COVID-19.

During the prior temporary period when DMMs operated remotely, the Exchange added Commentaries .02, .03, .04, and .05 to Rule 7.35A, which set forth limited circumstances when a DMM may be permitted limited entry to the Trading Floor or provided remote access to Floor-based systems for the purpose of effecting a manual IPO Auction, Core Open Auction in connection with a listed company's post-IPO public offering, or Trading Halt Auction for reopening a security following a regulatory halt issued under Section 2 of the Listed Company Manual.⁷ Because these Commentaries remain operative,⁸ beginning December 28, 2020, the relief described in these Commentaries will be available to DMMs.

Proposed Rule Change

The Exchange proposes to add Commentary .07 to Rule 7.35A to provide that, for a temporary period that begins December 28, 2020, and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on April 30, 2021, the

York City temporarily closed. See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110>.

The Exchange's current rules establish how the Exchange will function fully-electronically.

⁶ On May 23, 2020, the Trading Floor was reopened on a limited basis to a subset of Floor brokers. See Securities Exchange Act Release No. 88933 (May 22, 2020), 85 FR 32059 (May 28, 2020) (SR-NYSE-2020-47) (Notice of filing and immediate effectiveness of proposed rule change). On June 17, 2020, the Trading Floor was reopened to a subset of DMMs. See Securities Exchange Act Release No. 89086 (June 17, 2020) (SR-NYSE-2020-52) (Notice of filing and immediate effectiveness of proposed rule change).

⁷ See Securities Exchange Act Release Nos. 88488 (March 26, 2020), 85 FR 18286 (April 1, 2020) (SR-NYSE-2020-23) (amending Rule 7.35A to add Commentary .02); 88546 (April 2, 2020), 85 FR 19782 (April 8, 2020) (SR-NYSE-2020-28) (amending Rule 7.35A to add Commentary .03); 88705 (April 21, 2020), 85 FR 23413 (April 27, 2020) (SR-NYSE-2020-35) (amending Rule 7.35A to add Commentary .04); and 88950 (May 26, 2020), 85 FR 33252 (June 1, 2020) (SR-NYSE-2020-48) (amending Rule 7.35A to add Commentary .05).

⁸ See Securities Exchange Act Release No. 90795 (December 23, 2020) (SR-NYSE-2020-106) (Notice of filing and immediate effectiveness of proposed rule change to extend the temporary period for specified Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C and temporary rule relief in Rule 36.30).

Exchange would (1) permit a DMM limited entry to the Trading Floor or (2) provide a DMM remote access to Floor-based systems, for the purpose of effecting a manual Core Open Auction in connection with a corporate action that may result in a significant price discovery event or a manual Direct Listing Auction.

As noted above, during the prior temporary period while the Trading Floor was closed to DMMs, the Exchange permitted limited reentry to the Trading Floor for the purposes of effecting an IPO Auction, Core Open Auction in connection with a post-IPO offering, and specified Trading Halt Auctions. The Exchange has also provided DMMs with remote access to NYSE trading systems that are located on the Trading Floor so that a DMM can manually effect such Auctions remotely. The Exchange now proposes to provide DMMs with limited entry to the Trading Floor or remote access to NYSE trading systems so that a DMM may manually effect a Core Open Auction in connection with a corporate action that may result in a significant price discovery event or a Direct Listing Auction.

To effect this change, the Exchange proposes to add Commentary .07 to Rule 7.35A to provide that:

For a temporary period that begins on December 28, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on April 30, 2021, the Exchange will (1) permit a DMM limited entry to the Trading Floor or (2) provide a DMM remote access to Floor-based systems, for the purpose of effecting a manual Core Open Auction in connection with a corporate action that may result in a significant price discovery event or a manual Direct Listing Auction.

After a security is listed, an issuer may undergo a corporate action that results in a significant price discovery event for the Core Open Auction on the morning of such corporate action. For example, a new company may be listing in connection with a carve-out or spin-off transaction. In such cases, both the newly listed company and the existing issuer that is carving

out or spinning off a new listed company may undergo significant price discovery events in their respective Core Open Auctions. Similarly, a company emerging from bankruptcy may have a significant price discovery event for its Core Open Auction. In addition, upon consummation of a business combination, the Core Open Auction for an issuer listed as a special purpose acquisition company (“SPAC”) may also result in a significant price discovery event.⁹

While a DMM is permitted under Exchange rules to effect Core Open Auctions electronically, even when a security is affected by a corporate action, DMMs generally manually facilitate Core Open Auctions for issuers undergoing corporate actions that may result in a significant price discovery event. When a DMM manually effects such Core Open Auctions, the DMM is able to publish pre-opening indications pursuant to Rule 7.35A(d), which would be in addition to the Auction Imbalance Information available for such Core Open Auctions, thus promoting transparency in advance of a significant pricing event. In addition, when manually effecting such Core Open Auctions, the DMM can assess the buy and sell interest and determine when and at what price to open the security. The Exchange believes that during the temporary period when DMMs are operating remotely, it would promote fair and orderly markets to provide DMMs with limited entry to the Trading Floor or remote access to Floor-based systems so that DMMs may continue to effect such Core Open Auctions manually.

Separately, because of the importance of the DMM to the Direct Listing Auction, the Exchange recently amended Rule 7.35C to provide that the Exchange would not facilitate Direct Listing Auctions.¹⁰ In addition, DMMs are not permitted to facilitate a Direct Listing Auction

⁹ Section 102.06 of the Listed Company Manual sets forth initial listing requirements applicable to a company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specified period of time.

¹⁰ See Securities Exchange Act Release No. 90768 (December 22, 2020) (SR-NYSE-2019-67) (Order setting aside action by delegated authority and approving a proposed rule change).

electronically.¹¹ Accordingly, a DMM must facilitate a Direct Listing Auction manually. To enable the Exchange to provide issuers with the option to list on the Exchange via a Direct Listing during the temporary period when DMMs are operating remotely, the Exchange proposes that DMMs be permitted limited entry to the Trading Floor and be provided remote access to Floor-based systems for the purpose of manually effecting a Direct Listing Auction.

This proposed rule change could be implemented immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

On December 23, 2020, the CEO made a determination under Rule 7.1(c)(3) that, beginning December 28, 2020, as a precautionary measure, DMM units would return to working remotely.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote fair and orderly Core Open Auctions in connection with an issuer undergoing a corporate action that may result in a significant price discovery event. The Exchange believes that it would promote fair and orderly markets to provide the DMM with mechanisms to facilitate such Core Open Auctions manually because it would provide flexibility for the DMM of when to facilitate such Auctions and at what price. DMMs would also be able to publish pre-

¹¹ See Rule 7.35C(c)(1)(C).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

opening indications in connection with such Core Open Auctions, which would promote transparency.

In addition, because a Direct Listing Auction must be effected manually, this proposed rule change would allow for Direct Listing Auctions to occur during the period when the Trading Floor is temporarily closed to DMMs. Accordingly, this proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange would be able to provide issuers with the option to list on the Exchange via a Direct Listing during the temporary period when DMMs are operating remotely.

The Exchange believes that, by clearly stating that this relief will be in effect through the earlier of the reopening of the Trading Floor facilities or the close of the Exchange on April 30, 2021, market participants will have advance notice that a Core Open Auction in connection with an issuer undergoing a corporate action that may result in a significant price discovery event may be effected manually by the DMM during this period, and therefore may not be conducted at 9:30 a.m.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to ensure fair and orderly Core Open Auctions in connection with a corporate action that may result in a significant pricing event and Direct Listing Auctions by providing a DMM with either limited access to the Trading Floor or remote access to Floor-based systems for the sole purpose of effecting such Auctions manually during a temporary period when the Exchange Trading Floor has been closed to DMMs in response to social-distancing measures designed to reduce the spread of the COVID-19 virus.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁶ and Rule 19b-4(f)(6)(iii) thereunder.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may take effect immediately. The Exchange has stated that, because of the rapid changes to the New York City-area public health conditions, it made the determination to close the Trading Floor to DMMs with only two business days' notice before such closure would take effect. However, the Exchange represents that at least three SPACs listed on the Exchange are anticipated to complete their business combinations during the week of December 28, 2020, and the Core Open Auctions for such securities are expected to be significant pricing events. The Exchange has asked the Commission to waive the operative

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has complied with this requirement.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

delay so that the DMM assigned to these securities would be able to effect the Core Open Auctions manually. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the proposed rules to become effective in time for DMMs to manually effect Core Open Auctions for those securities that are anticipated to have significant price discovery events during the week of December 28, 2020. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁰

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2020-109 on the subject line.

²⁰ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78s(b)(2)(B).

Paper Comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2020-109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2020-109 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,

Assistant Secretary.

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²² 17 CFR 200.30-3(a)(12).